IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4454 OF 2003
(For condonation of Delay)
IN
CRIMINAL APPLICATION NO.573 OF 2005
(Leave to Appeal)

The State of Maharashtra Applicant

vs.

1. Mohmad Irfan alisa Lallu Mohmad
Ramjan & ors. Respondents

Smt.V.R.Bhonsale, APP for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 1st February 2005

P.C.

Heard the learned APP and perused the criminal application for condonation of delay.

2. On 18.01.2003 the IIIrd Additional Sessions Judge, Malegaon in Sessions Case No.35/1991 acquitted the respondents of the offences punishable under Sections 143, 147, 148, 323, 307 read with Section 149 of the Indian Penal Code and Section 135 of Bombay Police Act. The State dissatisfied thereby initially filed criminal appeal on 31.10.2003 which is now converted into the criminal application for leave to appeal. Since it is

barred by time, the present criminal application has been taken out for condonation of delay.

3. The question that is to be considered by us is whether the criminal application makes out sufficient cause for condonation of delay. As per the application, the delay in making the criminal application for leave to appeal is of 166 days. From the facts set out in the criminal application it transpires that the application for the certified copy was made on 18.01.2003 itself. The certified copy was ready on 17.02.2003 and delivered to the concerned Public Prosecutor on that date. By the letter dated 11.03.2003 (Sic 11.03.2002), the Additional Public Prosecutor, Malegaon recommended to the Law and Judiciary Department to prefer an appeal against the judgment of acquittal passed on 18.01.2003. The Law and Judiciary Department scrutinised the judgment and advised the Public Prosecutor, High Court, Appellate Side, Mumbai vide resolution dated 08.05.2003 to prefer an appeal against the judgment of acquittal. The said resolution was received by the office of Public Prosecutor on 12.05.2003. The appeal (now converted into criminal application for leave to appeal) was filed on 31.10.2003. It is stated in the application that the concerned Additional Public Prosecutor was busy with the admission as well as final hearing matters and because of the shortage of stenographers in the office of Public

Prosecutor, the delay occurred.

4. Even if we exclude the period from 18.01.2003 until 12.05.20903 when the resolution was received by the office of Public Prosecutor, Mumbai to challenge the impugned judgment of acquittal dated 18.01.2003, we find that the criminal application does not set out sufficient cause for the period thereafter. The statement that the Additional Public Prosecutor was busy with admission as well as final hearing matters and that there was shortage of stenographers in the office of Public Prosecutor is not only vague but also stereotype and does not reasonably explain the delay from 13.05.2003 to 31.10.2003. It does not take more than five months for drafting the criminal appeal. The ground set out that the concerned Additional Public Prosecutor was busy with the admission as well as final hearing matters during this period does not seem to be correct because in the month of May, 2003, the High Court was in summer vacation and criminal matters of urgency were taken during that period by the Vacation Judge and, therefore, the concerned Additional Public Prosecutor being busy with the admission as well as final hearing matters before the Court does not arise. We, thus, find that the sufficient cause is not made out warranting condonation of delay.

5. Criminal application for condonation of delay is, accordingly, rejected.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)